PETITION FOR WRIT OF CERTIORARI

86-1323

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

No._____

JAMES R. SCHWANDER and CARLOTA SCHWANDER,

Petitioners,

vs.

ALBERT E. CORDOVA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JAMES R. SCHWANDER
CARLOTA SCHWANDER
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Walnut Creek, Ca. 94598
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Petitioners in Propria Persona

QUESTIONS PRESENTED

1. Whether members of society who are not lawyers or members of the legal profession are entitled to the same treatment and Constitutional guarantees under the law, Federal Statutes, State Statutes, Civil Codes and Rules of Court as those who are lawyers?

2. Whether the property, including the homes and life savings of those who are not lawyers can be gifted under color of non-existant laws by the courts to any lawyer who makes a request for such property?

3. Whether court judges can ignore the Constitution, Federal Statutes, Codes of Civil Procedure, Rules of Court and Evidence Codes to take the property of non-lawyers and, through collusion,

conspiracy and covert activity, as in the instant case, gift that property to lawyers?

4. Whether an appeal to prevent violations of the laws as written can be dismissed in violation of federal statutes and the constitution?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

No. _____

JAMES R. SCHWANDER and CARLOTA SCHWANDER, Petitioners,

vs.

ALBERT E. CORDOVA

Respondent,

EMERGENCY

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

The petitioners, James R. Schwander and Carlota Schwander, petitioners herein, pray that a Writ of Certiorari

issue to review the judgment of the United State Court of Appeals for the Ninth Circuit entered in this case on October 21, 1986.

OPINIONS BELOW

A copy of the Court of Appeals' Order, not yet published, is appended hereto as Appendix A, infra, A1. The order of the district court, it is believed not yet published, is appended as Appendix B hereto, infra, p. A2-A3. Petitioner's Objection To Appellee's Opposition To Motion For Order and Appellee's motion to dismiss appellents appeal is printed in Appendix C hereto, infra, p. A4-A21. The decision of the court of Appeal State of California First Appellate District, Division Two, not published in the official records, is

printed in Appendix D hereto, infra, p. A22-A44. Petitioners' Petition For Rehearing is printed in Appendix E hereto, infra, P. A45-A78.

The judgment of the Superior Court of The State of California In and For the County of Marin, is printed in Appendix F hereto, infra, p. A79-A81.

Attorney client contract is printed in Appendix G hereto, infra, p. A82-A85.

JURISDICTION

The order of the Court of Appeals for the Ninth Circuit was entered on October 21, 1986 (Appendix A1). No additional statement was provided. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1), 2101(C)(F) and 2106.

CONSTITUTIONAL, STATUTORY AND FEDERAL PROVISIONS INVOLVED

Amendment IV to the United States Constitution provides in part as follows:

> The right of the people to be secure in their persons, houses, and effects, against unreasonable--- seizures, shall not be violated----

Amendment V to the United States Constitution provides in part as follows:

> No person shall be deprived---of--- property---without due process of law----

Amendment VIII provides in part as follows:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV provides in part as follows:

> No State---shall---deprive any person of---liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

28 U.S.C. 1446(B) provides in part as follows:

> If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant---of a copy of an order or other paper from which it may first be ascertained that the case is one which is or has become removable.

42 U.S.C. 1983 provides in part as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory---subjects, or causes to be subjected, any citizen of the United States or other person---to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit or equity, or other proper proceeding for redress---

42 U.S.C. 1985(3) provides in part as follows:

> Depriving persons of rights and privileges. If two or more persons in any State or Territory conspire---for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws---or---from---securing the equal protection of the laws---or to injure any citizen in person or property---in any case of conspiracy set forth in this section, if one or more persons engage therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages---against any one or more of the conspirators.

STATEMENT OF THE CASE

This case arises from the purchase by petitioners of their first home in 1975. The structural and soils defects respecting the property were concealed and petitioners thus filed suit in Alameda County, California. Following inaccurate advice from their first attorney and his failure to commence discovery over a period of ten months petitioners employed the services of other attorneys who failed to appear at hearings, pursue discovery procedures, meet contractural guarantees and who removed petitioner's civil suit, following a two plus year wait to reach the top of the trial calendar, from the trial calendar in breach of the agreement, causing another two year delay and EIGHTEEN THOUSAND DOLLARS of

additional expense. Following the termination of these attorneys the respondent in this case, lawyer Cordova was employed, who later broke off communications, concealed a settlement document and attempted to sabotage the settlement of the original underlying Superior Court, Alameda County case.

A contract was entered into with respondent five months prior to the pre-trial settlement of the case. The contract required a payment of $2,500 to respondent to prepare case for trial and a percentage of recovery over $15,000 if trial commenced. Recovery as had never been disputed by respondent, was to be the "difference" between the damaged value of petitioners' home and the undamaged value. A settlement agreement was agreed to at the pre-trial motion

hearing. The agreement was promoted by a Superior Court judge, now a federal judge. The agreement entered into in Court and read into the record called for petitioners to receive the undamaged value for their home without reduction for damage plus a cash payment of $15,000. Respondent told petitioner that the pre-trial agreement hearing was a trial and that he was entitled to another $7,000 in addition to the $2,500 he had previously been paid by petitioners. Petitioners informed him that they were not certain if the jury trial or any trial had in fact commenced, and that he would be paid per the contract terms. He insisted on payment of another $7,000 (+-) and became angry when he was told that following confirmation of trial commencing and determination of recovery

he would be paid per the contract. He became angry, concealed settlement information, failed to comply with the contract, broke off communications and forced his termination. Subsequent to this another court hearing was held at which petitioners represented themselves and at which the judges appraiser stated on the record that the market value of the property was reduced for damage. Naturally, when the market value in an undamaged state is reduced for damage you have damaged value. On planet earth. Since the judge refused to allow the petitioners, per the agreement, the undamaged value the only recovery was the $15,000 cash payment. Since respondents' percentage was to apply to recovery over $15,000 plus a $1,000 cash payment he was only entitled to an additional $1,000 and

refused an offer of an additional $3,000. He then sued petitioners at the Superior Court, County of Marin, State of California, and was awarded 500% more than the terms of the contract required--now totaling 800% more.

Earlier petitioners refused to complete the sale of their house since judge Vukasin had breached the settlement agreement. The judge then issued an order that the closing papers be signed which he followed up with ordering the bed ridden wife of petitioner, and petitioner JAMES SCHWANDER, out of the house and onto the streets without any funds from its illegal sale. Petitioner's anger with judge who is now a judge at the Federal District Court in San Francisco became well known and it is believed that this judge is responsible

for much of the tyranny that has caused a $2,500 plus $1,000 contractural obligation to, with the additional awards to respondent, reach $21,000.

The state courts, due to the lower state court judge's influence and the fact that petitioners have been vocal in exposing what is collusion, covert activity and conspiracy involving violations by the courts of petitioners' civil and constitutional guarantees and those of numerous other victims, have attempted to punish petitioners through the gifting to respondent of 500% more of petitioners' savings than required by the lawyer-client contract.

The courts have violated the rules of evidence, identified under REASONS FOR GRANTING THE WRIT, applied two standards of treatment under the law, one for

attorneys and a less favorable one for non-lawyers, violated petitioners constitutional guarantees, conspired on how to injure petitioners and are attempting to take the savings of petitioners and give that savings as a gift to the respondent lawyer.

It became apparent that when the Court of Appeal of the State of California First Appellate District Division Two issued their opinion on appeal on June 12, 1986 (Appendix D) that constitutional violations, conspiracy and collusion were afoot.

Throughout Petitioners' Petition For Rehearing to the State Appellate Court, First Appellate District, Division Two, it was pointed out that constitutional guarantees were being violated as referenced in particular on Page 13 lines 8

through 19 (Appendix E, infra, p. A75-A76.) It was also pointed out that the court was concealing, distorting and misrepresenting the record. On July 11, 1986 petitioners filed a Petition For Removal of Civil Action to the United States District Court For The Northern District of California which was remanded on September 29, 1986 to the Court of Appeal of The State of California For The First Appellate District, Division 2 (case No. A020927) without a certified order (Appendix B), a declaration from respondent requesting and supporting his Motion to Remand and the Order To Remand was not issued pursuant to 28 USC 1447(C)and was in difference to case law requiring such compliance. Thermtron Products, Inc. v. Hermansdorfer (1976) 423 US 336, 96 S CT, 584, 46 L.ED. 2d;

Self v. Self (1980, CA 5 TEX) 614 F 2d 1026; and Skinner v. American Oil (1979, SD IOWA) 470 F Supp 229.

Petitioners have exhausted all lower court rights.

Following the remand by the District Federal Court, petitioners filed a Notice of Appeal on September 17, 1985. On October 21, 1986 the appeal was dismissed by the United States Court of Appeals For The Ninth Circuit in difference to the failure of the lower court to follow established case law, the federal statutes and rules of court as stated above, thereupon, on November 4, 1986 petitioners filed a Motion For Stay and Approval of Supersedeas to prevent respondent, a lawyer, from executing upon the cash savings of petitioners in the Supersedeas bond pending an appeal to the Supreme

Court of the United States. No reply was received to this simple one page request supported by Supreme Court Rule 44, FRAP Rule 8, numerous state and federal case law and the Constitution respecting equal treatment. On January 3, 1987 a similar request was made to the Supreme Court of The United States, Justice Sandra O'Conner. The request was returned with the statement that, since the request was pending in the Ninth Circuit, the court would not consider it. Upon receipt of this information which, no doubt, the Ninth Circuit expected would be the situation back on November 4, 1986, petitioners contacted the Ninth Circuit for the 3rd time requesting that they approve or decline the request and cease in their activity in keeping the doors wide open for the respondent to steal,

under color of law, petitioners' property. Following this they issued their order denying the motion on the basis that they would call the rose (motion) which looked, felt, and smelled as a rose--an apple. That is, they would construe the "Motion for Stay" as something else--obviously to attempt to avoid the law as written and assist respondent, lawyer Cordova. Petitioners are convinced that the state court judge who defrauded petitioners out of their home, and who subsequent to that was promoted to a federal judge, was and is in back of much of the collusion and conspiracy experienced by petitioners in the courts in this action.

REASONS FOR GRANTING THE WRIT

The Decisions of the lower Courts in

this and numerous similar cases are a philosophical pronouncement to all consumers and residents of this country that lawyers are not subject to the laws that those who are not lawyers are subject to, that the property of the residents of this country can be taken from the owners and given by lawyers to any lawyer who takes a liking to the property and that the courtrooms, regardless of the law of the land and in contempt of that law, can be used as a vehicle to transfer the property of unfortunate victims under color of non-existant law to lawyers as gifts.

The decisions below, if permitted to stand, would place the stamp of approval by the highest court of this land on the ignoring of Constitutional guarantees dealing with equal protection of the

laws, due process, and their right of all persons to be secure in the property by any court judge who wants to ignore these alleged guarantees. Alleged guarantees against unreasonable seizures by any lawyer taking a fancy to their property. The Constitution of the United States of America, Amendments IV, V, VIII and XIV.

This petition is calling not only into question an isolated act of Congress but calling into question the very Constitution itself as it pertains to constitutional protections or guarantees for those residents of this country who are not lawyers. The United States may intervene in various types of proceedings. Pasadena City Board of Ed v. Spangler (1976) 427 US 424, 96 S CT. 2697, 49 L ED. 2d 599.

In the instant case we have a pat-

tern of collusion among various judges attempting to destroy petitioners reflected in numerous decisions such as, for one example, the trial court ignoring California Evidence Codes, Division 1, Chapter 1 Article 1, 500 (burden of proof), Evidence Code 803; Evidence Code Chapter 2, 550 (B); Chapter 3, Article 1, 600(A); 604; Chapter 6, Article 1, 780(B), (E), (F), (H), (I) ; and Chapter 1, Article 2, 810, 811(A), 813, 814. The codes deal with such items as presumption of fact not being evidence, that inference must be appropriate, credibility of witness, value of property relating to opinion may only be shown by opinions of witnesses qualified to express such values or the owner or spouse.

In the instant case the judge's own appraiser's on record testimony stating

that petitioners property was valued in its damaged condition was ignored. On appeal it was stated by the court that the appraiser didn't state what the amount of reduction for damage was. On planet earth it is not relevant whether the value of the property was reduced one dollar or one million dollars for damage. Reducing a fair market value for damage produces a product that EQUATES WITH DAMAGED VALUE as all the state court judges in this case know. Since recovery on which respondent was to be paid an additional percentage was accepted by all parties as the difference between damaged value and undamaged value, respondent was not entitled to a percentage of any recovery; their being only a "separate" cash recovery of $15,000 and the percentage formula applying to recovery applied

to recover over $15,000. Under the present situation respondent receives based upon the state court judges $2,500 (earlier paid by petitioners), plus $10,400, plus 10% interest on the judgment plus what appears will be an additional $6,000.00 in resisting petitioners' attempt to protect their savings from theft. A total of what it is believed will exceed $21,000.00. Petitioners position is one of a $15,000.00 recovery less $21,000.00 (+-). Respondent testimony though he committed known perjury several times during trial was accepted as fact respecting what petitioners damaged property value was in difference to the court's expert witness appraiser's testimony. That is, respondent decided petitioners recovered $45,000.00 while the courts appraiser decideed the recov-

ery was zero on the property. Note: A separate $15,000 payment was recovered by petitioners in addition to damage value.

The record is clear that petitioners cannot enforce or obtain their civil rights in the State courts. Bar Association of Baltimore v. Posner (1975, DC MO) 391 F Supp 76.

The power to open or vacate a judgment is based upon substantial principles of right and wrong and can be exercised for the prevention of injury and the furtherance of justice and can only be exercised if the Federal court maintains jurisdiction. Reynolds v. Birmingham, 29 Ala App 505, 198 Ga. 360. Van De Ryt v. Van D. Ryt, 6 Ohio St. 2d 31 Ohio Ops 2d 42, 215 NE 2d 698, 16 ALR 3d 271.

Petitioners first became aware that there was collusion and conspiracy among

the state courts when the Court of Appeals of The State of California issued their decision which is replete with prejudice, discrimination, distortions, twisting of the record and concealment. Petitioners within 30 days of learning of this removed their case to Federal District Court on July 11, 1986.

When the case was remanded to state court the decision was appealed to the Ninth Circuit on the basis described above. That is, a defective order and not remanded under 28 USC 1447(C) and in difference to case law as heretofore stated; e.g., Thermtron Products, Inc. v. Hermansdorfer (1976) 423 US 336, 96 S CT. 584 46 L.ED. 2nd and Self v. Self (1980 CA 5 Tex) 614 F 2d 1026.

The federal statutes such as 42 USC 1983 and 1985 that are alleged to protect

"all" residents of this country against deprivation of any rights secured by the Constitution the courts are making meaningless respecting issues involving lawyers or judges.

Petitioners removed their case to Federal Court under authority of several statutes including 28 USC 1446(B) and claiming violations under 42 USC 1983 and 1985.

CONCLUSION

This case is only one of thousands of similar cases. A ground swell is growing throughout the entire country respecting judges protecting lawyers against accountability and the courts participation, through ignoring the law in enriching lawyers with their victim's property.

For the foregoing reasons petitioners respectfully request that the Court grant this Petition for a Writ of Certiorari.

January 16, 1987

Respectfully submitted,

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Petitioners in Pro Per

APPENDIX A

FILED
OCT 21 1986
Cathy A. Catterson, Clerk
U.S.Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERT E. CORDOVA, Plaintiff-Appellee, vs. JAMES R. SCHWANDER and CARLOTA SCHWANDER Defendants-Appellants.	No. 86-2635 DC# CV-86-3831-DLJ Northern California ORDER

Before: HUG, POOLE and NORRIS, Circuit Judges

The appeal is dismissed for lack of jurisdiction. The district court's order granting a remand to state court is not appealable. Gravitt v. Southwestern Bell Telephone Co., 430 U.S. 723 (1977).

Appellee's request for sanctions is denied.

APPENDIX B

ORIGINAL
FILED
SEP 30 1986
William L. Whittaker
Clerk, U.S. Dist. Court
San Francisco

RECEIVED
SEP 22 1986
William L. Whittaker
Clerk, U.S. District Court
Northern District of California

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALBERT E. CORDOVA Plaintiff(s), vs. JAMES R. SCHWANDER, et al., defendant(s). _____/	No. 86-3831 DLJ ORDER FOR REMAND TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

Good cause appearing.

IT IS HEREBY ORDERED that the action of ALBERT E. CORDOVA vs. JAMES R. SCHWANDER and CARLOTTA SCHWANDER (Case No. 86-3831 DLJ) is hereby remanded to the Court of Appeal of the State of Cali-

fornia for the First Appellate District, Division 2 (Case No. A020927).

Dated: 9/29/86

The Honorable D. Lowell Jensen
Judge of the U.S. District Court
For the Northern District of Calif.

APPENDIX C

RECEIVED
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U.S.COURT OF APPEALS
1986 OCT 14 PM 3:57
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Docketed_____
Date Initial

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERT E. CORDOVA
Plaintiff/Appellee

vs.

JAMES R. SCHWANDER and
CARLOTA SCHWANDER
Defendants/Appellants

No. 86-2635
DISTRICT COURT
ACTION
NO.C863831 DLJ

FOR THE NORTHERN
DISTRICT OF
CALIFORNIA

OBJECTION TO APPELLEE'S OPPOSITION TO (APPELLANTS) MOTION FOR ORDER ON SUPERSEDEAS BOND APPROVAL ON APPEAL AND STAY (FRCP 62(D) AND (F) AND OPPOSITION TO APPELLEE'S MEMORANDUM OF POINTS AND AUTHORITIES TO DISMISS APPELLANT'S APPEAL

I

INTRODUCTION

Appellants, JAMES and CARLOTA SCHWANDER, file this objection to appellee lawyer Cordova's opposition to the court following the law as written and accepting Jim and Carlota's supersedeas bond (cash bond), as the plaintiff lawyer and the superior court have accepted as security to guarantee the Superior Court's gift, (from judge Richard Brener) to the plaintiff. Accepting the bond as required would prevent the life savings of the victims contained in this bond from being taken by the lawyer under color of law while the victim's appeal is pending. The law as written respecting the cash bond as it relates to preventing what could only be interpreted as a theft is Rules of Civil Procedure For The

United States District Courts Rule 62(d)(F).

Appellants also object to the dismissal of their appeal, as requested by appellee, so that their savings in the bond may be immediately taken by appellee.

Appellee, lawyer Cordova's alleged support for dismissal of the appeal has no foundation per the law as written since the remand or the sending back by judge Jensen of Jim and Carlota's original Superior Court Marin County case to the state court is defective per the law as written.

Per the Local Rules of the U.S. District Court For the Northern District of California appellee's request to Federal District Court judge, DL Jensen, to send Jim and Carlota's case back to state

court, though it was removed propertly from state court to federal court by the appellants under 28 USC 1446(B), was defective. That is, appellee's motion failed to comply with Local Rule 220.2. The rule states "...Each notice of motion shall be accompanied by...declarations under penalty of perjury...."The rule doesn't say may, but states shall. The appellee's motion was not supported by a declaration. This was called to the attention of judge Jensen who ignored the violation of the Rule on the part of the lawyer appellee.

Further legal defects in the returning of appellant's case to state court respecting the issue of gifting by the judge 5 times more than the terms of the lawyer/client contracts, designed by the appellee lawyer, required are the follow-

ing: (1) the order of judge Jensen failed to state the reason why the case was being sent back to state court as required by case law; (2) the judges order failed to reference 28 USC S 1447(C) as a reason for remand (sending the case back(, in fact, totally failed to state any reason; (3) a certified copy of the order was not mailed to the clerk of the state court as required by 28 USCS 1447(C) and (4) the sending back to the state court was an abuse of the laws as written since Jim and Carlota provided an abundance of on record confirmation that; (A) the rules of evidence were violated by the state court; (B) a covert conspiracy was in motion among a certain federal judge, which has now expanded to include other federal judges; and state court judges to punish appellants for

exposing violations of the law by certain court judges; (C) certain state court activity to attack appellants included perjury, distorting and concealing factual information, misrepresentation and violation, as was pointed out to the district court, appellants constitutional rights including, but not limited to, those guarantees expressed by 42 USCS 1983 and 1985.

II

STATEMENT OF FACTS

Appellants Jim and Carlota, have paid over $40,000 in lawyer fees! Appellee, lawyer Cordova's action was for the purpose of being awarded by court judges with 5 times more than the terms of his agreement, with Jim and Carlota, that he was fully paid under required. To assist appellee in this respect the state courts

including the State Appellate Court, (1) ignored the rules of evidence; (2) ignored the fact the appellee perjured himself during a brief hour trial on two important issues one of which included a false statement by appellee that he wasn't representing Jim and Carlota at a time when he was concealing a base case settlement document from them; (3) ignored expert on record documents of the base case judge's appraiser and accepted in its place a confirmed perjurers self-serving, unsupported with any evidence, statement that appellants recovered an undamaged value for their property and on that basis appellee, Cordova, was entitled to 5 times more than he was paid per the terms of the lawyer/client contract; (4) attempted to make it appear through distorting and twisting the

record that Jim and Carlota were dishonest which attempt was disproved and fully exposed for what it was worth...and attempted to enrich a contract violator and perjurer with the property of innocent victims and to punish these victims even if, in doing do, it required the violation of numerous laws as written.

While Appellee was suppose to represent appellants in a speedy settlement of the base case he: (1) attempted to extort sums of money from Jim and Carlota above the terms of his lawyer/client agreement; (2) attempted to conjure up new client contracts; (3) broke off communications with appellants, except for ongoing extortion attempts, for approximately six weeks; (4) concealed a settlement document; (5) violated the terms of the settlement agreement in the base case and

(6) forced Jim and Carlota to terminate the relationship. All of the above was brought to the attention of the state courts to no avail. It was also brought to the attention of the state courts that appellee was totally paid under Part I of his contract prior to the time he forced appellants to terminate him. SEE EXHIBITS 1, 2, 3, 4 and 5 attached hereto and made a part hereof.

Appellants have exhausted their state court rights. The current situation is that from a recovery of $15,000 in the underlying case lawyer Cordova per the state judges is to receive $14,900 + 10% and Jim and Carlota net $100 less costs, interest, etc.

III

ADDITIONAL POINTS AND AUTHORITIES TO SUPPORT THE IMPROPRIETY OF THE DISTRICT COURT SENDING (REMANDING) APPELLANTS CASE BACK TO STATE COURT FOLLOWING APPELLANT'S REMOVING IT TO FEDERAL COURT

Appellee in support of his motion supporting Remand and dismissing Jim and Carlota's appeal quotes. Thermtron Products, Inc. v. Hermansdorfer, (1976) 423 US 336, 96 S CT. 584, 46L. ED. 2d., a Supreme Court case. Appellee expects us to believe that this case supports the remand and quotes a portion of the decision which states "...It is unquestioned in this case and conceded by petitioners this section prohibits review of all remand orders issued pursuant to Section 1447(C) whether erroneous or not and

whether review is sought by appeal..." Appellee failed to state that the Remand Order in Jim and Carlota's case was not issued pursuant to anything, in fact, was totally silent respecting 1447(C)(D). Appellee also failed to state that in the above case--the case he quoted--the Supreme Court Reversed the Remand by the district court and reversed the support of the Remand by the Appellate Court and concluded that, (1) a Federal District Court could not remand a properly removed case for reasons not authorized by 28USCS 1447(C), (2) the District Court had exceeded its authority; (3) the provisions of 28USCS 1447(D) generally prohibiting preview of remand orders applied only to remand orders issued under 1447(C) and (4) the court stated in part that "...Neither the propriety of the

removal nor the jurisdiction of the court was questioned by respondent the district court in the slightest. Section 1447(C) was not even mentioned.... We agree with petitioners the District Court exceeded its authority in remanding on grounds not permitted by the controlling statute...." In Jim and Carlota's case, no grounds were stated and a certified copy of the order to state court was not mailed to state court as required by USCS 1447(C).

The Supreme Court also stated in the above case that "...Section 1447(D) is not dispositive of the reviewability of remand orders in and of itself. That section and 1447(C) must be construed together as this court has said of the predecessors to these two sections in Employers Reinsurance Corp. v. Bryant, supra, at 380-381, 81LEDD 289,57 S CT 273

and Kloeb v. Armour & Co. 311 US 199, 202, 85 L ED 124, 61 S CT. 213(1940)....This means that only remand orders issued under 1447(C) and invoking the grounds specified therein--that removal was improvident and without jurisdiction--are immune from review under 1447(D)...." 423 US 346.

It was stated in Self v. Self (1980, CA 5 Tex) 614F 2d 1026 that a ban on appellate review of remand applies only if order was issued on ground specified in 28USCS 1447(C). In the present situation it was not.

In Skinner v. American Oil Co. (1979, SD Iowa) 470 F Supp 229 it was stated that remand on grounds other than those expressly enunciated in 28USCS 1447(C) will subject District Court's action to appellate review and possible

issuance of writ of mandamus.

IV

ACCEPTANCE OF SUPERSEDEAS BOND ON ..PPEAL

Per Rule (62(D)(F) of the Rules of Civil Procedure For The United States District Courts a supersedeas bond--cash bond--on appeal would stay execution upon an appellant and that a judgment debtor if entitled to a stay according to state law would be accorded such a stay in district court. Appellees would be entitled to a stay in the state had they maintained their action in state court.

V

SANCTIONS SHOULD BE IMPOSED AGAINST PLAINTIFF APPELLEE FOR HIS WITHOUT MERIT MOTION TO DISMISS APPELLANT'S APPEAL OF THE ORDER FOR REMAND TO STATE COURT

Appellee's request to dismiss appellant's appeal is clearly contrary to existing law as is his order given to district court to remand appellant's case to state court. Appellee an officer of the court has mislead the court respecting the law as written and case law. His motion is contrary to existing law and his purpose is purely to complete under color of law the theft obtained through perjury and conspiracy with others the theft of Jim and Carlota's remaining savings.

The laws as written and corresponding case law clearly hold that an order to remand under the circumstances such as in this case is reviewable on appeal. Appellee should be aware of this and if his knowledge as a lawyer is in need of development this defect should be brought

to the attention of the court.

Appellee, lawyer Cordova, has cynically, shamelessly and criminally perjured himself, repudiated his lawyer/client contract, exploited his position as an officer of the court, lied under oath and manipulated the courts and figuratively speaking sold his soul for, rather than 40 pieces of silver, the life savings of his victims. Such behavior should be punished.

As a result of this pattern of wrongful conduct by plaintiff/appellee, defendants/appellants, Jim and Carlota Should have their property--savings--returned to them and be awarded the same amount $14,900 in damages and costs. Appellants should also be awarded $2,500 as sanctions for appellee's wrongful conduct described herein.

VI

CONCLUSION

The authorization to engage in the practice of law as a lawyer and officer of the court should not be allowed to be used as a license to steal under color of law the property of innocent victims. If the laws as written including constitutional guarantees are to have any meaning Jim and Carlota's state action should be returned to federal court, their Motion for Order on Supersedeas Bond Approval should be approved,--that is, the present bond on file in state court accepted--and the appellee prevented from executing upon appellants in any manner.

DATED: October 12, 1986

James R. Schwander

Carlota Schwander
Defendants/Appellants
in Propria Persona

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APPENDIX D
NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COPY

FILED
June 12, 1986
Court of Appeal
First Dist.
RON D. BARROW,
Clerk

ALBERT E. CORDOVA,

Plaintiff and Respondent

vs.

JAMES R. SCHWANDER, et al.,
Defendants and Appellants

A020927

Marin County Superior Court No. 102688

James and Carlota Schwander (defendants) appeal from a judgment awarding Albert Cordova (plaintiff) $10,400 plus $2,000 attorney's fees.

Viewing the evidence in the light most favorable to the prevailing party, as we must on appeal (Nestle v City of Santa Monica (1972) 6 Cal.3d 920, 925-926), the following appear to be the

pertinent facts presented at trial.

On June 9, 1980, defendants hired plaintiff to act as their attorney in a real estate fraud case which defendants had filed against Wells and Bennett Realtors in the Superior Court of Alameda County. On that date defendant James Schwander executed a contingent fee agreement. Thereafter, on July 23, 1980, plaintiff sent defendant James Schwander a letter, the pertinent portion of which stated as follows: "As we agreed, my sole fee in this matter consists of a fixed payment of $2,500.00 cash, receipt of which is acknowledged, for preparing the case for trial, which payment would be the entire fee if the case settles prior to trail, plus an additional $1,000.00 fixed fee payable at the conclusion of trial. You are responsible,

however, for all costs incurred, as per our original agreement. [P] If the case proceeds to trial, there will be, in addition, a contingent fee in the amount of twenty-five percent (25%) of any recovery between $15,000 and $35,000, and thirty-three and one-third percent (33-1/3%) of any recovery in excess of $35,000." Nothing contained in either the contingent fee agreement of the letter defined when trial would commence for the purpose of the fee agreement.

The underlying case was assigned to a trial department after which time certain pretrial motions were heard. Prior to the selection of a jury, a negotiated settlement was reached between defendants and the realtor defendants in the underlying action. The terms of the settlement were that defendants herein would

receive $15,000 in cash plus the fair market value of their home, i.e., the fair market value of the property without any reduction in value for the concealed structural and soil defects. A hearing was subsequently conducted to determine the value of the property at which appraisers testified. Defendant James Schwander represented himself at this hearing.

At the trial below, plaintiff Cordova testified that he and defendants had orally clarified the terms of the agreement on four different occasions. The first time was at the conclusion of a deposition of one expert witness. At that time the parties agreed that trial would be deemed to have commenced on December 1, 1980. The second occasion was during the course of the settlement

discussions before Judge Vukasin. Plaintiff asked Mr. Schwander, "'[d]o we have any dispute whatsoever that the trial has in fact commended'" and defendant replied in the negative. The third occasion was immediately before a jury was to be sworn at which time defendant Schwander agreed that there was no disagreement as to the free agreement. Finally, plaintiff stated that when the parties were celebrating the completion of the settlement negotiations, they all agreed that plaintiff was entitled to a percentage fee and were trying to determine how it could be computed.

James Schwander denied that there ever had been any agreement concerning when trial had commenced; he stated that he had relied on the terms of the written agreement at all times. However, this

testimony was impeached by his earlier deposition in which he stated that at the time of the "celebration" discussion he believed that the trial had commenced. It was not until he had "called a few attorneys" to ask their opinions that he came to believe that trial had not commenced.

On December 4, 1980, plaintiff sent defendants a letter in which he confirmed the understanding he believed the parties had reached during their discussion after the completion of the settlement negotiations. The letter clearly contemplated that plaintiff was entitled to a percentage of defendants' recovery. In response, defendant Mr. Schwander sent plaintiff a letter, dated December 11, 1980, in which he rejected plaintiff's interpretation of the parties' conversa-

tion, but confirmed that he had offered to pay plaintiff $3,000 in addition to the amounts specified in the contracts. Plaintiff rejected the offer.

Plaintiff testified that he had worked 172 hours on the case and that his hourly rate was $75 per hour. He acknowledged that he had already received $2,500 towards payment of the total amount.

Based on this evidence the trial court found, among other things, that plaintiff had been discharged by defendants prior to the completion of the services for which he had been retained, that plaintiff was entitled to compensation for services rendered in quantum meruit, and that the reasonable value of plaintiff's services was $12,900. The court then awarded plaintiff $10,400 (the

value of his services less the $2,500 he previously had been paid) plus $2,000 attorneys fees pursuant to Business and Professions Code section 6204, subdivision (d).

I.

Whether the valuation hearing constituted a "trial."

On appeal defendants generally challenge the amount of the judgment awarded to plaintiff by the trial court. They first assert that plaintiff had been paid in full under the terms of the contract. This assertion is apparently based on the premise that the underlying action never proceeded to trial and no oral agreement was made to the contrary.

"'A trial is the examination before a competent tribunal, according to the law of the land, of the facts or law put in issue in a cause for the purpose of

determining such issue. When a court hears and determines any issue of fact or of law for the purpose of determining the rights of the parties, it may be considered a trial.'" (City of Pasadena v. Superior Court (1931) 212 Cal. 309, 313, quoting Tregambo v. Comanche Mill & Min. Co. (1881) 57 Cal. 501, 505; see also, McDonough Power Equipment Co. v. Superior Court (1972) 8 Cal.3d 527, 531; 7 Witkin, Cal. Procedure (3d ed. 1985) S 1, p. 18.)

In the instant action plaintiff correctly described the status of the underlying proceedings in his trial brief: "Although many elements of the underlying case were resolved, such as the cash payment of $15,000.00 as additional damages, a critical issue of fact remained uncertain and unresolved -- the value of the real property without defect. This issue

would determine Defendant's ultimate recovery, and was therefore a significant and material element of the case." There is no dispute that a hearing on the value of defendants' property was conducted at which evidence was given and a decision was reached. Accordingly, we find that a trial was held.

Defendants maintain that even if there was a trial, the contract was ambiguous and should be interpreted most strongly against the party drafting the instrument. (Taylor v. J. B. Hill Co. (1948) 31 Cal.2d 373, 374). We reject this argument for two reasons. First, as stated above, the law is clear on the definition of what constitutes a trial. Second, the settlement which took place in the present case was unlike the typical settlement that terminates all fac-

tual disputes. Clearly defendants knew or should have known that the services of a retained attorney would normally be used in such subsequent valuation proceedings as occurred here. Because we conclude the hearing constituted a trial, it is clear that the record supports the court's determination that "Cordova was discharged by defendants prior to the completion of the case and prior to the completion of the services for which plaintiff was retained." It is also clear that had plaintiff not been terminated, he would have been entitled to the contract contingency fee.

II.

Whether quantum meruit recovery is limited to the contract price.

Defendants next contend that even if plaintiff is entitled to a quantum meruit recovery, the recovery should be limited

to the contract price.

In Fracasse v. Brent (1972) 5 Cal.3d 784, the California Supreme Court held that an attorney employed under a contingent fee contract and discharged prior to the occurrence of the contingency is entitled to quantum meruit recovery for the reasonable value of services rendered up until the time of discharge, rather than the full amount of the agreed contingent fee. (Id., at p. 791; see also, Spires v. American Bus Lines (1984) 158 Cal.App.3d 211).

Traditionally, quantum meruit recovery is not limited by the contract price and a contract cap is inconsistent with the basis of quantum meruit as an alternative to the agreed price. (See generally, Note, Limiting the Wrongfully Discharged Attorney's Recovery to Quantum

Meruit -Fracasse v. Brent (1973) 24 Hastings L.J., 773-774.)

Prior to Fracasse, attorneys were allowed to sue for the contract price or for quantum meruit if they were discharged without cause (see Echlin v. Superior Court (1939) 13 Cal.2d 368, 375-376), but were limited to the reasonable value of their services when discharged for cause. (Fracasse, supra, at pp. 788-789; Salopek v. Schoemann (1942) 20 Cal.2d 150). Even so, in case of discharge without cause it was held that "where the contract amount is less than the reasonable value of the services, recovery is nevertheless limited to the fee fixed by the contract. [Citation.]" (Moore v. Fellner (1958) 50 Cal.2d 330, 342.)

Fracasse did not address the precise

issue of a contract cap on quantum meruit recovery; however, the court did conclude that "the attorney's action for reasonable compensation accrues only when the contingency stated in the original agreement has occurred -- i.e., the client has had a recovery by settlement or judgment. It follows that the attorney will be denied compensation in the event such recovery is not obtained." (Id., at p. 792, fn. omitted.)

The court also explained: "To the extent that such discharge occurs 'on the courthouse steps,' where the client executes a settlement obtained after much work by the attorney, the factors involved in a determination of reasonableness would certainly justify a finding that the entire fee was the reasonable value of the attorney's services.

[Citations.]" (Id., at p. 791.)

We believe that implicit in Fracasse is the notion that the contract price sets limits on quantum meruit recovery by the discharged attorney. Clearly, Fracasse holds that if there is no recovery by client, the attorney may not recover compensation. It follows that the discharged attorney may not recover more in quantum meruit than he would have recovered under the contract. This is consistent with Moore and other pre-Fracasse authority limiting recovery in quantum meruit to no more than the contract fee. It would be strange, indeed, to conclude that by erasing the distinction between discharge for cause and without cause Fracasse allowed attorneys discharged for cause to recover more in quantum meruit than they could have recovered previously

under that theory.

Moreover, our conclusion is consistent with the stated policy concern of Fracasse that favors the client's absolute right to discharge his attorney at any time. (Id., at p. 786.) As recognized by the majority: "'The right to discharge is of little value if the client must risk paying the full contract price for services not rendered upon a determination by a court that the discharge was without legal cause. The client may frequently be forced to choose between continuing the employment of an attorney in whom he had lost faith, or risking the payment of double contingent fees equal to the greater portion of any amount eventually recovered . . . . The uncertain position of the client in such circumstances is illustrated by the

record in the present case where the trial court found the discharge was without cause and this court has made a contrary finding and concluded the discharge was justified. Unless a rule is adopted allowing an attorney as full compensation the reasonable value of services rendered to the time of discharge, clients will often feel required to continue in their service attorneys in whose integrity, judgment or capacity they have lost confidence.' (Salopek v. Schoemann, supra, at pp. 156-157; see Denio v. City of Huntington Beach, supra, 22 Cal.2d 580, 603-604.)" (Fracasse, supra, at pp. 789-790.)

Any other conclusion would place a practical limit on the client's absolute right to discharge an attorney in whom he has lost confidence.

The result we reach is also consistent with cases following Fracasse such as Spires v. American Bus Lines, supra, 158 Cal.App.3d 211 wherein the court held: "where, as here, the contingent fee is insufficient to meet the quantum meruit claims of both discharged and existing counsel, the proper application of the Fracasse rule is to use an appropriate pro rata formula which distributes the contingent fee among all discharged and existing attorneys in proportion to the time spent on the case by each. Such a formula insures that each attorney is compensated in accordance with work performed, as contemplated by Fracasse, while assuring that the client will not be forced to make a double payment of fees." (Id., at p. 216, emphasis added.)

It does not follow, however, that

appellants are entitled to the cap upon plaintiffs' recovery which they claim or that they are entitled to reversal on this account. Appellants contend they actually recovered only $15,000 in cash and thus, under the original agreement plaintiff would, presumably, not have been entitled to any percentage recovery of such award. Thus, plaintiff would be limited to a $3,500 fee, $1,000 above the $2,500 he received at the outset. Appellants support their argument by asserting that the $180,000 price paid to purchase their home was the value of the home in its damaged condition, contrary to the terms of the settlement agreement. They refer to a single page of the transcript of the valuation hearing where appellant Schwander in cross-examining the court's appraiser elicited the following testi-

mony:

"BY MR. SCHWANDER:

"Q: Are you aware, Mr. Holabird, that this property was to be appraised on the basis of no stigma, no structural defects and no soil defects?

"A: I believe I said awhile ago that I discussed it with the court beforehand and he told me if I thought it had an effect, to use it.

"Q: Did you deduct for any structural problems, soils problems or stigma in your conclusions?

"THE COURT: We have covered that already.

"MR. SCHWANDER: In my judgment, it is not that clear.

"THE COURT: It is annoying, but it is something that can be lived with.

"BY MR. SCHWANDER:

"Q: Did you reduce your evaluation determination for these factors?

"A: I undoubtedly did. No idea how much I would have reduced it, however."

This testimony does not by itself establish that the court actually awarded the damaged value of the residence. The record does not disclose what sum the court in the underlying case concluded represented the difference between the damaged and undamaged market value of the property, whether the court in the instant case found such sum the measure of appellants' recovery, or whether the court concluded appellants' recovery was to be measured by the entire $195,000 amount. The Statement of Decision does not address this issue and appellants' request for such statement of decision and objections to the proposed statement

did not specify this issue as one to be determined. Had this omission been brought to the attention of the court, we could not have presumed "that the trial court decided in favor of the prevailing party as to those facts or on that issue." (Code of Civ. Proc., S 634; see Code Civ. Proc., S 632; 7 Witkin, Trial, supra, S 399, p. 405.)

Absent such a specification of issues, we indulge the usual presumption in favor of the prevailing party. Plaintiff Cordova testified at trial that one of appellants' appraisers "had concluded that the difference in value of the property with and without defect was $30,000" and that plaintiff believed $45,000 (the $30,000 sum plus the $15,000 cash payment) represented the recovery to which the percentage formula would be applied.

If so, the contingency fee recoverable under the agreement would have exceeded the $10,400 fee award.[1] Therefore, the contract limitation would not operate.[2]

The judgment is affirmed.

Kline, P. J.

WE CONCUR:

Rouse, J.

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[1]The method for calculation of the award under the contract itself is not entirely clear. We assume the trial court read the agreement to award Cordova 33-1/23% of the total $45,000 recovery; meaning the cap would be $15,000. If the court read the contract to provide 25% of the first $35,000 and 33-1/3% of the remaining $10,000, the cap would be $12,083. This figure exceeds the $10,400 net award.

[2]Plaintiff seeks attorneys fees on appeal. No good reason appears to depart from the standard practice of each party bearing its own fees, with costs to the prevailing party.

APPENDIX E

IN THE COURT OF APPEAL OF THE STATE

OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

ALBERT E. CORDOVA,
Plaintiff and Respondent A 020927

vs.

JAMES R. SCHWANDER and
CARLOTA SCHWANDER
Defendants and Appellants
_____/

PETITION FOR REHEARING

On Appeal from the Judgment of the Superior Court of the State of California, Marin County.

Judge, Richard H. Breiner

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IN THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

ALBERT E. CORDOVA,
Plaintiff and Respondent, A020927

vs.

JAMES R. SCHWANDER and
CARLOTA SCHWANDER,
Defendants and Appellants
_____/

PETITION FOR REHEARING

On Appeal from the Judgment of the Superior Court of the State of California, Marin County

JUDGE, RICHARD BREINER

To judges P. J. Kline, J. Rouse and J. Smith of the Court of Appeal of the State of California, First Appellate District, Division TWO:

POINT 1

GENERAL OBSERVATIONS OF VIOLATIONS

From the first few words uttered by one of the judges at oral argument of this appeal it was clear that discrimination, bias and a predetermined decision had been made. The judges left no doubt by the tone and type of questions and response to answers that they had become part of a bay area judge conspiracy respecting James and Carlota Schwander. The above is further supported by the written record and is accurate. It is also accurate that the filing of this PETITION FOR REHEARING is a total waste of time and energy. However, perhaps some public benefit may result from this effort through one of the copies of this paper which is being distributed to a variety of the media, etc., ending up

with a paper, etc., that is not intimidated or corrupted and thus not supporting, through silence, a corrupt legal profession. No member of society would sit in silence while his or her life savings or home or that of his or her family's is being "stolen" by a segment of society that is totally out of control. That is, by a guild of lawyer judges trampling the laws of the land to enrich other members of their guild (in some instances themselves), as demonstrated by the tyranny in this case which is no accident, but has been carefully plotted.

Should you three judges of division two, or any one of you, believe that you can justify your position of participating in the theft of my family's savings in your goal to enrich a fellow lawyer, or can prove that it is not outright

theft under the guise of law, I challenge you to join me on television and let the people decide. This same invitation is also extended to two lawyer judges on division four, your associates Carl Anderson and

M. O. Sabraw who recently decided that I can't sue a lawyer who damaged me for negligence and, at the same time, decided that their decision should be hidden, that is, they refused to publish is as you have yours in the official records. Its so obvious what is going on one doesn't even have to ask . . . why.

POINT 2

THE CASE AND ISSUE IS SIMPLE, BUT THE LAWYER JUDGES HAVE ATTEMPTED TO CHANGE THE MEANING OF THE ENGLISH LANGUAGE AND HAVE BLATANTLY DISTORTED AND VIOLATED THE LAW OF THE LAND.

The two (2) contracts drafted by the lawyer Cordova, who the judges are dis-, torting both the English language and the law of the land to enrich, required a $2500 payment to lawyer Cordova to prepare James and Carlota's case for trial which $2500 he was paid - plus a $1,000 additional payment if trial commenced. In addition a percentage formula fee was to be paid the lawyer on the difference between the undamaged value of James and Carlota's home (which lawyer judge John Vukasin defrauded them out of) and the damaged value of their home. If any additional cash was received the amount was to be added to the referenced difference or recovery.

The percentage formula was the following:

25% of the difference (recovery)

between $15,000 and $35,000 and 33 1/3% of any difference (recovery) in excess of $35,000. No percentage was to apply to the 1st $15,000 of any recovery.

Lawyer Breiner also known as a judge and you 3 lawyer judges were provided with the court appraiser's sworn statement which was that the value he gave the house was a value after reduction for defects, or a damaged value, not an undamaged value.

In addition to damaged value which equaled no recovery, James and Carlota received a $15,000 cash payment.

Using the terms of the lawyer's contract with James and Carlota and deducting $15,000 from total recovery, which sum no percentage payment was to be applied to per the written contract, the

lawyer was not entitled to any further payment above the original $2,500 he was earlier paid since there was no recovery. Damaged value equals no recovery and a percentage formula applied to zero equals zero. However, the judges want it to appear that trial started regardless of the fact that the settlement was a pre-trial settlement and that James and Carlota, the victims were on record for a jury trial and never waived their CONSTITUTIONAL RIGHT TO A JURY TRIAL. If by some wild stretch of the enrich the lawyer imagination and goal of the 3 lawyer judges an illegal trial commenced, the maximum additional sum lawyer Cordova would be contracturally entitled to would be $1,000. The settlement which judge Vukasin deceived the Schwanders into entering was intended to avoid a trial

not to create one.

POINT 3

EXAMPLES OF YOU THREE APPELLATE COURT JUDGES ATTEMPTING TO DISTORT AND TWIST THE LAW, CONCEAL ON RECORD FACTS, PULL STATEMENTS OUT OF CONTEXT AND CONCEAL THE FACTS

You judges say that you must view the evidence in the light most favorable to lawyer Cordova and you use as law some 1972 published opinion of 3 other lawyer judges at your facility. Are you trying to tell us that this so called decision authorizes you to distort the facts and conceal other in the record facts. I thought you 3 judges said view the evidence. Your concealing the evidence, using heresay lawyer Cordova self-serving statements not documented by any sub-

mitted evidence by him to support his self-serving statements and use this oral Cordova heresay and call it evidence and use it over the on record submitted documentation of James and Carlota which is part of the record in this case, is not following any laws as written that I have ever heard of and is as prejudicial and bias as anything I have encountered. Several examples of what I refer to follow:

You state the contract didn't specify when trial would commence. Trial commences per the common standard and the common standard when a jury trial commences - which is the only type of trial I requested - is when the jury is impaneled. No jury was ever impaneled and we had a constitutional right to a jury trial! We only agreed in the pre-trial

settlement to allow Vukasin the judge to determine, under honest standards, the undamaged value of our property. We did not agree to a non-jury, or any, trial. Our position is that any trail in violation of constitutional guarantees and right is an illegal trial, is null and void and in fact is no trial at all. Therefore, Cordova is not entitled to any additional fee or percentage above what he had been paid. The attempt to get the Schwanders and enrich fellow lawyers while knowingly violating the Constitutional rights of the Schwanders, etc., should subject all those involved to civil damages caused the Schwanders and to additional penalties under RICO (the federal Racketeering and Corrupt Organizations Act).

Further on the subject of the trial

commencing or not, the judge, Vukasin, stated during the pre-trial settlement of the underlying case that " . . . I am pleased to inform you you have a settlement of this case . . . ." See trial transcript of July 23, 1982 (Cordova vs. Schwander) page 18, lines 17 through 20, page 41, line 28 and page 42, lines 1-21. This position we supported with the evidence as Defendant's Exhibit A in evidence.

You quote as evidence the not supported by any documentation oral statements of lawyer Cordova in your ongoing activity to enrich him with the life savings of my family tied up in the appeal bond. You state ". . . plaintiff Cordova testified . . . he and the defendants had orally clarified the terms of the agreement on four different occasions . . .

The second occasion was during the course of the settlement discussions before Judge Vukasin. Plaintiff asked Mr. Schwander, "[d]o we have any dispute whatsoever that the trial has in fact commenced" and defendant replied in the negative . . . " Now, any person reading the above quote would believe that it is factual and that it is taken from the transcript of the settlement discussions before Judge Vukasin. Your presentation is a total deception. I am looking at a transcript of the settlement discussions which you also had as part of the record and nowhere is the preceding quote "[d]o we have any dispute whatsoever that the trial had in fact commenced [1] included. It is not included because it never happened! Judge Breiner also had the benefit of this information. The same

applies to the alleged other 3 occasions which you reference and which is undocumented heresay; the self-serving statement of lawyer Cordova who lied during the enrich the lawyer at all cost trial which caused this appeal. The perjury he committed under oath was documented as you 3 judges and judge, Breiner know. Regardless, you use this proven perjurer's statements as to when I was suppose to have agreed trial commenced per the terms of our contract with him and his unsupported with any evidence other than his heresay that my recovery was $45,000, rather than the $15,000 recovery which the documents on record support.

Respecting the lawyer's lies, during the trial of July 23, 1986 before Judge Breiner we pointed out that lawyer Cordova was concealing from us case settle-

ment information in 1980 during the settlement period following the pre-trial settlement on December 3, 1980. However, Cordova denied he was representing us at the time and this was an outright lie. The Substitution of Attorney's form documents that he was attorney of record until January 18, 1981 and this document was part of the record and filed January 27, 1981 and presented as an exhibit. See trial transcript of July 23, 1982, page 45, lines 13-28, page 46, lines 1-28 and Declaration of James R. Schwander an Carlota Schwander In Support of Defendant's Motion For New Trial, page 4, lines 14-28. The lawyer didn't deny concealing the document, he just lied by stating on the record that he was representing us.

Lawyer Cordova lied again during

trial by stating he was not aware that we had hired prior, before we contacted him, until 1-1/2 months subsequent to his agreement with us. However in the Reports Transcript of July 23, 1980, the lawyer stated that we brought in 2 boxes full of material. Can you imagine that, 2 boxes of material that fails to disclose we had prior attorneys on the case prior to him. further, perjury and lies of lawyer Cordova are documented on page 84 of Clerks Transcript on Appeal lines 14-28 and documented with an Exhibit, page 103-104 if Clerk's Transcript on Appeal.

Despite all the evidence respecting the dishonesty of lawyer Cordova you use his self-serving heresay undocumented evidence to calculate what he states we recovered above damage value for our home

in the original case settlement.

Of course one reason you attempt to discredit our testimony and state that we impeached ourselves is that it is an attempt to lay a foundation for your use of lawyer Cordova's undocumented and unsupported with evidence statement that my appraiser had concluded that the difference in value of the property with and without defect was $30,000 and that the $15,000 cash payment added to this represents my recovery to which the percentage formula should be applied. No evidence was presented that the difference in value between damage and no damage was $30,000 or that the damaged value of the property was $150,000, but you take this heresay self-serving statement of the lawyer as fact. You accept it as taking priority over the submitted evidence of

the courts own appraiser who stated that he reduced the undamaged value of the property for defects and that this reduced value after deducting for defects was $180,000. You ignored further expert evidence, which was submitted and in the record, of my appraiser which stated that the undamaged value of the property was $195,000. This was submitted and attached as EXHIBIT 1 to our Motion of January 21, 1981 to judge Breiner for a new trial and made available to you. This and the court's appraiser responding to my questions respecting his valuation of the property as follows:

"Q. Are you aware, Mr. Holabird, that this property was to be appraised on the basis of no stigma, no structural defects and no soil defects?

A. . . . I discussed it with the

court beforehand and he told me if I thought it had an effect, to use it.

Q. Did you deduct for any . . . .

A. I undoubtedly did . . . . "

It is not difficult to understand that the court's appraiser thought the defects effected value and thus his valuation of $180,000 was a damaged value after allow for the defects! The court's appraiser stated that he reduced the value for defects.

You attempt to present the unconfirmed undocumented heresay as fact. You use it as though it was submitted by God rather than that of a self-serving lawyer attempting to be rewarded by you for 5 times more than the terms of his contract require. The documented record confirms that at all times we attempted to hold the lawyer to the terms of the written

contracts he drafted and not play around with changing the terms and conjuring up dates when trial was suppose to have started for the benefit of lawyer Cordova.

Your next questionable technique to enrich lawyer Cordova with our cash appeal bond followed the above and involved an attempt to discredit us, to make it appear that the record shows that we lied and that we impeached ourselves. You attempt this on page 3 second paragraph of your pre-ordained decision. You went so far in your attempt that you took out of context one of my deposition statements and deliberately omitted the following sentence in the deposition statement which totally destroy (as stated on page 33 line 1-14 of the trial transcript of Cordova v. Schwander which

quoted the deposition) your attempt to support your accusation that my testimony was impeached by my earlier deposition in which you stated that I stated that at the (to use your words) "celebration" discussion that I believed the trial had commenced. You went on to state that it was not until I "checked a few a attorneys" to ask their opinions that I came to believe that trial had not commenced. The documented written record confirms that in the deposition sentence you excluded my statement:

> . . . Excuse me. Excuse me. Let me back off. I'm not sure. It seems to me that, trying to remember, that I--I wasn't certain at that time whether trial had actually commenced or not, really. I believe that is more factual information that I just didn't know if trial had commenced or not.

Now we had this expert evidence in the record that we received a damaged

value for our prior home . . . not an undamaged value. We have further documented evidence in the court record from my appraiser, an MAI, that the undamaged value of our prior home was $195,000. This being the case, our receiving $180,000 for a $195,000 home plus a separate cash payment of $15,000 equates with a documented $15,000 recovery . . . not the undocumented $45,000 heresay recovery alleged by lawyer Cordova. You and judge Breiner accepting self-serving undocumented heresay over documented evidence is covert, bias prejudicial and a violation of our Constitutional and Civil Rights and I'm certain, as you are, a violation of others laws as well as case law.

POINT 4

THE 4 JUDGES EXCEEDED THE MAXIMUM PAYMENT THAT THE LAWYER DRAFTED CONTRACT WOULD HAVE REQUIRED (IN THEIR ENTHUSIASM TO ENRICH LAWYER CORDOVA WITH THE LIFE SAVINGS OF JIM AND CARLOTA) IF (1) TRIAL HAD STARTED: (2) THE LAWYER DIDN'T REPUDIATE THE TERMS OF HIS OWN CONTRACT WHICH HE DRAFTED: (3) THE LAWYER DIDN'T CAUSE HIS OWN TERMINATION BY REPUDIATING THE CONTRACT, ATTEMPTING TO DELAY AND SABOTAGE THE PRE-TRIAL SETTLEMENT AGREEMENT; (4) JIM AND CARLOTA HAD RECEIVED THE UNDAMAGED FAIR MARKET VALUE FOR THEIR PROPERTY; (5) THE RECOVERY WAS $45,000 NOT THE $15,000 THAT THE DOCUMENTED EVIDENCE CONFIRMED.

The judges expect the readers to believe that the court's appraiser appraised the property on an undamaged

value basis regardless of the appraiser stating that he reduced the value for damage. Naturally, the courts appraiser would have reduced it to $150,000 if that was the damaged value as the judges and lawyer Cordova would like everyone to believe based upon Cordova's heresay undocumented evidence of the alleged value at the time of the settlement, and his heresay statement that the recovery was $45,000.

To ignore the documented evidence and to accept the self-serving statements of Cordova in place of the documented evidence as to the damaged value of the property and applying the contract formula, which the judges claim that they don't understand, we develop:

Recovery per Cordova.....$45,000 ($30,000 + $15,000 cash)

Recovery amount between	
$15,000 & $35,000 =	$20,000
Percentage to be applied.....	25%
	$ 5,000
Recovery amount between	
35,000 and $45,000 =	$10,000
Percentage to be applied =	33 1/3%
	$ 3,330
Change to prepare case for	
for trial.....	2,500
Additional $1,000 fee if	
trial commenced.....	$ 1,000
Total	$11,833
Additional award by judge	
Breiner to lawyer for	
suing Jim and Carlota.....	$ 2,000
Total	$13,833

Actual judgment.....	$14,900
Additional bonus given lawyer Cordova by court.....	$ 1,067

That's correct, the judges even gave the lawyer $1,067 above what the contract would have provided if its requirements had been met.

For every angle the decision from the lower court (judge Breiner) to the appellate court judges cannot be justified and is a violation of case law and the law of the land. Case law sets the contract as a limit of recovery so we don't need as you state to know how judge Breiner developed his figures. Facts are facts and Breiner ignored the facts and the law to enrich another lawyer.

PENDING FINANCIAL STATUS OF LAWYER AND CLIENT RESULTING FROM COURTS ATTEMPT TO ENRICH LAWYER CORDOVA WITH HIS/THEIR VICTIMS SAVING:

Respondent

LAWYER PLAINTIFF

Original Payment	$ 2,500
Gifts by Judges	12,400
$14,900 + 100% interest	

Appellant

NON-LAWYER VICTIMS

Recovery	$15,000	(above damage value)
Less judge awards to lawyer	$14,900	
	$ 100	less costs, interest, etc.

Its not only a violation of case law and you know exactly what case law, but a violation of the 4th, 7th, 8th and 14th amendments to the Constitution of The United States to support unsupportable violations of JIM and CARLOTA's Constitutional and Civil Rights. Ever your

attempts to conceal, distort and misrepresent the facts cannot prevent the light of truth and fact from revealing the enormity of this white collar under the guise of law, crime. Respecting contract disputes, etc. the following case law supports Jim and Carlota: Taylor v. J. B. Hill Co. (1948) 31 Cal 2d. 373, 374; Reynolds v. Sorosis Fruit Co. (1901) 133 Cal. 624, 630; Bradner v. Vasquez (1954) 43 Cal. 2d 147, 151; Hicks v. Clayton (1977) 67 Cal. App. 3d 251,262; Pixweve Aircraft Co. 61 Cal. App 2d 21, 24; and Moore v. Fellner (1958) 50 Cal. 2d 330, and Hernandez v. Fujioka (1971) 40 Cal. App. 3d 294, 302.

Not only truth, honesty and morality require that the present decision be reversed, but the law of the land, as written, demands that it be reversed.

For if it is not, lawyers will be able to continue to ignore contracts with clients, change written contracts in any manner and as often as they decide at any time they decide, make any unsupported by the evidence statements that best meets their needs and have the heresay accepted as truth by lawyer judges over documented evidence of non-lawyers. Lawyers will continue to feel secure that their actions, regardless of how vile or corrupt will be supported by lawyer judges.

DATED: July 26, 1986

_____
James R. Schwander

_____
Carlota Schwander
Defendants and
Appellants
In Pro Per

CC: The US Attorney (Russoniello)
The Justice Department
The Media
Others

To sin by silence when they should protest makes cowards of men.

Abraham Lincoln

Every person who, under color of any statute, ordinance, regulation, custom, or territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

United States Code Annotated, Title 42, S 1983.

APPENDIX F

FILED
OCT 15 1982
PETER MEYER
Marin County Clerk
by P. Bradley, Deputy

IN THE SUPERIOR COURT OF THE STATE

OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

ALBERT E. CORDOVA,
Plaintiff,

vs.

JAMES E. SCHWANDER,
et al.,
Defendants
_____/

No. 102 688

RHB JUDGMENT

The above entitled cause came on regulary for trial on July 23, 1982, in Department 6 of the above entitled court, the Honorable Richard H. Breiner, Judge, presiding, without a jury, a jury having been expressly waived, and was actually tried on that date. Plaintiff, Albert E. Cordova appeared In Propria Persona and

James E. Schwander and Carlota Schwander appeared by Terrence Andrews, their attorney.

Evidence, both oral and documentary, was introduced on behalf of all parties and the cause was argued and submitted for decision. The Court, having considered the evidence and heard the arguments of counsel, and being fully advised, makes the following Decision:

IT IS ORDERED, ADJUDGED, AND DECREED that plaintiff, Albert E. Cordova have and recover from defendants, James E. Schwander and Carlota Schwander the sum of $10,400 with interest thereon at the rate of ten percent (10%) per annum from the date of the verdict until paid, together with attorney's fees in the sum of $2,000 and costs of suit.

WITNESS, the honorable Richard H.

Breiner, Judge of this court, and my hand and seal of this Court, this _____ day of OCT 15 1982, 1982.

CLERK OF THE SUPERIOR COURT

ORDER

Let the foregoing judgment be entered.

Date: October 15, 1982

Richard Breiner
Judge

cc:
Albert E. Cordova, Esq.
818 Fifth Ave., Suite 208
San Rafael, CA 94901

Terrence W. Andrews, Esq.
1091 Fifth St.
Napa, CA 94559

APPENDIX G

Robert B. Ingram Telephone
Albert E. Cordova (415) 472-5450

Law Offices of
ROBERT B. INGRAM
4340 Redwood Highway, Suite 133
San Rafael, California 94903

July 23, 1980

Mr. James R. Schwander
2235 Melvin Road
Oakland, California 94602

Re: Schwander v. Wells & Bennett, et al.

Dear Mr. Schwander:

This will confirm our agreement as to my continued representation of you and your wife in your action against Wells & Bennett, Realtors, et al.

First, I will attempt to advance the

case for trial at the earliest available date, with the understanding that I will inform the court that the additional delay from September 11, 1980, the first available date suggested by the calendar clerk, to December 1, 1980, the date currently set, was occasioned in part by my failure to appear on June 27, 1980, to urge observance of Local Rule 507 of the Local Rules of the Superior Court of the County of Alameda.

Second, I will make another motion to amend the complaint, once we have a decision on the motion to advance.

Finally, with regard to my fees for representing you in this case, there will be no additional charge for the services indicated above. As we agreed, my sole fee in this matter consists of a fixed payment of $2,500 cash, receipt of which

is acknowledged, for preparing the case for trail, which payment would be the entire fee if the case settles prior to trial, plus an additional $1,000.00 fixed fee payable at the conclusion of trial. You are responsible, however, for all costs incurred, as per our original agreement.

If the case proceeds to trial, there will be, in addition, a contingent fee in the amount of twenty-five percent (25%) of any recovery between $15,000.00 and $35,000.00, and thirty-three and one-third percent (33-1/3%) of any recovery in excess of $35,000.00.

I trust that our relationship will continue on an amicable and cooperative basis and I look forward to my continued representation in this case.

Sincerely,

ALBERT E. CORDOVA

AEC/jrw

JAMES R. SCHWANDER

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA)
)SS:
COUNTY OF CONTRA COSTA)

I, G. S. Dindral, depose and state under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years and not a party to or interested in the within entitled cause. I served by mail on each of the parties three copies of the foregoing petition for Writ of Certiorari enclosing true copies of said document in a sealed envelope with postage fully prepaid in the United States mail at Walnut Creek, Ca. and addressed as follows:

Albert E. Cordova,
A Professional Law Corporation
Stephen Ciotoli
820 Fifth Street, Suite B
San Rafael, Ca. 94901

Office of the County Clerk
Marin County
Hall of Justice, Rm. 151
San Rafael, Ca 94903

Office of the Clerk
United States Court of Appeals For The
Ninth District
7th & Mission Streets
P. O. Box 547
San Francisco, CA 94101

_____

G. S. Dindral
161 Northcreek Circle
Walnut Creek, Ca. 94598
(415) 944-9706

Subscribed and sworn to before me

this _____ day of January, 1987.

_____

NOTARY PUBLIC - State
of California